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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. ADAM RONALD PETERS, Defendant and Appellant.	A147095 (San Francisco County Super. Ct. No. SCN224031)

Defendant Adam Ronald Peters' theft of three laptop computers from a Best Buy electronics store was observed by store security personnel on surveillance cameras. When defendant walked out of the store without paying, he was detained by store security personnel who recovered the laptops from the duffel bag he was carrying, and then turned him over to Police Officer Buckley. At a police station, and after the appropriate constitutionally-required admonishments, defendant admitted taking the laptops.

After a jury found him guilty of second degree burglary involving more than $950 and grand theft of property worth more than $950 (Pen. Code, §§ 459, 487, subd. (a)), defendant was sentenced to two years of local incarceration. His sole contention on this timely appeal concerns admission of only one of the custodial statements he made to Officer Buckley.

The trial court denied defendant's pre-trial oral motion to exclude everything said to Officer Buckley, ruling that the statements were not elicited in violation of *Miranda v.*

Arizona (1966) 384 U.S. 436. The court then granted the prosecution's in limine motion to be allowed to play a recording of Officer Buckley's interview with defendant to the jury. The court overruled defendant's effort to exclude the entire statement based on lack of relevancy and Evidence Code section 352. The recording was played for the jury during Officer Buckley's testimony.

About half way through the interview, Officer Buckley asked defendant, "Have you stolen anything from Best Buy before?" Defendant answered "This would be my fifth time." In his second attempt at excluding the entire statement to Officer Buckley, defense counsel referenced this answer, but only within the context of relevance: "He's not on trial for any other crimes than the alleged crimes that happened on April 18. So what he's done prior in Best Buy I believe is completely irrelevant and that should be stricken [*sic*]."

Counsel never invoked Evidence Code section 1101 as a ground for exclusion, but that statute is now conjoined with Evidence Code section 352 as the basis for defendant claiming the trial court's second ruling "rendered [his] trial fundamentally unfair" and requiring reversal of his burglary conviction. The trial court's decisions on relevancy and the application of Evidence Code section 352 are both reviewed under the deferential abuse of discretion standard. (*People v. Merriman* (2014) 60 Cal.4th 1, 74; *People v. Cox* (2003) 30 Cal.4th 916, 955.)

As to relevance, immediately before posing the "Have you stolen anything from Best Buy before" question, Officer Buckley said to defendant: "[B]ased on everything, all the statements of the people that were at Best Buy. This is kinda like the complete investigation of the computers being taken, right? Based on the video that was—that they have of you. I have watched the video and I have a copy of it. The statements of what they said I guess you are a known person at Best Buy." And after the answer by defendant, Officer Buckley continued: "So what happened was is I guess there was—there was an incident with some headphones a week—yesterday—a couple of days ago and then one at 17th and anyway they circulated a picture of you in the store. So when you walked in everybody was already—they knew who you were and what you were

doing and they started video on you and the video shows you putting the boxes in and all that." Later in the interview, defendant stated he planned to keep one of the laptops and sell the others. And still later, that he had formed the intent to steal the computers "[a]n hour or two before I went" because he was "broke[]."

The entirety of defendant's interview—which was what he was moving to exclude—was clearly relevant to the burglary charge because it showed defendant formed the felonious intent prior to entry. It would also explain the close attention paid by the store employees. Defendant's admission that he had previously pilfered the establishment would only corroborate why defendant was a "known person" who would attract scrutiny from the moment he entered the store. Defendant does not argue otherwise. On the other hand, the prejudicial impact of the statement—by which we mean only the one statement about his previous thefts—seems very small in the sense of its power to inflame the jury or preclude a fair trial. (*People v. Valdez* (2012) 55 Cal.4th 82, 145; *People v. Riggs* (2008) 44 Cal.4th 248, 290.) We conclude abuse of the trial court's discretion has not been established.

The case against defendant was quite strong. Indeed, it would be hard to imagine a more air-tight case. The employees' in-court identifications were positive, and not challenged by defendant. Defendant did not object when the video surveillance tape showing him entering the store—without the laptops—was received in evidence. Defendant's immediate apprehension precluded the possibility of alibi or mistaken identification. He was in a word, caught red-handed, a characterization accepted by his counsel in closing argument. Defendant, who did not testify, never denied his culpability for the theft, only that it was the result of impulse, not premeditation, and that the prosecution had not proved the value of the laptops, making the offense shoplifting, not burglary, and petty theft, not grand theft. The single admission about defendant's previous thefts from Best Buy did figure in the prosecutor's closing argument, but only briefly and on the subject of defendant's intent. On the other hand, defense counsel made a fairly effective effort to neutralize it with the following argument: "Apparently he stole from Best Buy before. Does that prove every time he went in the store he stole from Best

Buy? How many times has he been in Best Buy? A hundred times. Maybe stolen four times. Is that proof of what his intent was . . . [?]"

Thus, even were we to conclude that the trial court abused its discretion in admitting the entirety of defendant's interview with Officer Buckley, the error would be harmless according to any standard of prejudice.

The conclusion does not vary if Evidence Code section 1101 is also considered. As the precise point was not actually considered or decided by the trial court, some measure of speculation is inevitable. Uncharged criminal acts may be admissible for the limited purpose "to prove some fact (such as motive, . . . intent, preparation, plan, knowledge, . . . absence of mistake . . .) . . . ." (Evid. Code, § 1101, subd. (b)), and any or more of these exceptions may have been allowed by the trial court. Here, we rely on what the court said at sentencing, when it cited as an aggravating factor "the manner of the crime indicat[ed] the planning, carrying the empty bag in and filling it and then bolting for the exit . . . ." Given the overwhelming nature of the case against defendant, this is not an instance where evidence of uncharged offenses would raise concerns that it evoked in the jury " ' a "tendency to condemn [defendant, regardless of whether] . . . he is believed guilty of the present charge . . . ." ' " (*People v. Foster* (2010) 50 Cal.4th 1301, 1331.)

The same is true for defendant's related claim that the same evidence required the court to instruct the jury, even in the absence of a request, with CALCRIM No. 375 on the limited proper use of such evidence. Such an independent duty is rare, reserved for the " 'occasional extraordinary case in which unprotested evidence of past offenses is a dominant part of the evidence against the accused . . . .' " (*People v. Rogers* (2006) 39 Cal.4th 826, 854.) There is no possible way to view the single statement at issue as "a dominant part" of the prosecution's case against defendant.

The judgment of conviction is affirmed.

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Richman, Acting P.J.

We concur:

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Stewart, J.

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Miller, J.

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